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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 ALEX HOLMES, *et al.*,

4 Plaintiffs,

New York, N.Y.

5 v.

20 Civ. 4448 (LJL)

6 CHET MINING CO. LLC, *et al.*,

7 Defendants.

8 -----x

Contempt Hearing

9 April 11, 2022
10:10 a.m.

10 Before:

11 HON. LEWIS J. LIMAN,

12 District Judge

13
14 APPEARANCES

15
16 E. STEWART JONES HACKER MURPHY, LLP
Attorneys for Plaintiffs

17 BY: JOHN F. HARWICK

18 CHET STOJANOVICH
19 Pro Se Defendant

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(Case called)

THE DEPUTY CLERK: Starting with counsel for plaintiffs, please state your appearance for the record.

MR. HARWICK: John F. Harwick, E. Stewart Jones Hacker murphy, for plaintiffs.

THE COURT: Good morning, Mr. Harwick.

I understand Mr. Stojanovich is on the phone.

MR. STOJANOVICH: I am, your Honor.

THE COURT: I'm not excusing Mr. Stojanovich's failure to appear today in court as ordered, but I am going to permit him to be heard over the telephone.

This hearing has been scheduled on plaintiffs' application for an order holding Mr. Stojanovich in civil and criminal contempt initially for his failure to comply with Article 52 subpoenas served to aid in enforcement of a money judgment, as well as Mr. Stojanovich's failure to appear for deposition pursuant to those subpoenas. In other words, the subpoenas were for both documents and for his appearance.

The hearing is also scheduled to determine whether Mr. Stojanovich should be held in civil or criminal contempt for violation of my order on February 14, 2022, ordering Mr. Stojanovich to appear for deposition on March 4, 2022, and to produce documents pursuant to the subpoenas on March 1, 2022.

I also will hear from counsel as to whether I should

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1 hold Mr. Stojanovich in contempt for failure to attend in
2 person today pursuant to my order issued again on February 14,
3 2022, which could not have been clearer in that it required
4 both parties to attend today.

5 I will hear first from counsel for the plaintiff in
6 terms of whether I should hold Mr. Stojanovich in civil or
7 criminal contempt.

8 The standard is that my orders must have been clear
9 and unambiguous and the proof of noncompliance with the order
10 must be clear and convincing. In addition, it must be shown
11 that the contemnor has not been reasonably diligent and
12 energetic in attempting to accomplish what was ordered.

13 So I will hear from Mr. Harwick as to whether those
14 elements are satisfied. I do have an affidavit from
15 Mr. Harwick plus the deposition transcript.

16 And then I will hear from Mr. Stojanovich as to
17 whether he has anything to say in terms of his earlier failure
18 to comply with the subpoenas, his failure to comply with my
19 order with respect to the deposition and the production of
20 documents, and his failure to comply with my order to be here
21 today.

22 Go ahead, Mr. Harwick.

23 MR. HARWICK: Thank you, your Honor.

24 May it please the Court:

25 This matter is brought before you by way of notice of

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1 motion dated January 12, 2022, originally returnable on
2 February 11. The Court held a conference on the record in open
3 court following the presentment of that motion. By the way,
4 there was no opposition ever filed or recorded by
5 Mr. Stojanovich for that motion. But, in any event, the Court
6 held a conference in this case on the record in open court and
7 specifically instructed Mr. Stojanovich not only to appear in
8 person for a further Article 52 collection deposition, but
9 also to produce, electronically or otherwise, various documents
10 that were responsive to my subpoena by no later than March 1,
11 2022.

12 As I indicated in my supplemental affirmation, dated
13 April 1, 2022, which is on file and was served on
14 Mr. Stojanovich, he did appear for the deposition, but he did
15 not produce the documentation that was called for by my Article
16 52 subpoena and the documentation that was requested at his
17 prior collection depositions.

18 So I do believe there was not only a clear violation
19 of the Article 52 subpoena which has the effect of a court
20 order, but also a clear violation of your Honor's order which
21 was clear, placed on the record, and made known to
22 Mr. Stojanovich that he was not only to appear for the
23 deposition, but also to produce his various financial records
24 and documents and electronic data for examination.

25 I would note that while he did appear at the

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1 deposition, he was very evasive with his answers; and when I
2 asked him to go retrieve his phone and his wallet and his car
3 rental agreement, he left and he didn't come back.

4 So I do think there is adequate grounds here to hold
5 this judgment debtor in contempt of court, not only civilly but
6 criminally, and give him an opportunity to purge that contempt
7 by full compliance with the outstanding subpoenas and with full
8 compliance with the Court's clear order that was placed on the
9 record in open court.

10 THE COURT: Let me ask you a couple of follow-up
11 questions, Mr. Harwick.

12 First, in terms of the production of documents and the
13 subpoenas and my order that the documents and materials be
14 produced by March 1, do you want to highlight for me the
15 particular items that you believe you made a showing that the
16 defendant has or has access to and has failed to produce and
17 tell me what I should look at?

18 MR. HARWICK: Yes, your Honor.

19 Well, specifically, with regard to certain electronic
20 data, we want to inspect his phone. He had his phone.

21 THE COURT: I believe I have got the subpoenas.

22 MR. HARWICK: Yeah, I believe you do, your Honor. It
23 is Exhibit A to our subpoenas. It should have been part of the
24 original motion packet. If not, I have another copy here
25 today.

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1 THE COURT: Do you want to hand it up?

2 MR. HARWICK: Yes. But if you have my motion papers,
3 it is found -- I can give you a cite or I can give you --

4 THE COURT: I do have your original motion papers.

5 MR. HARWICK: Okay.

6 THE COURT: I have got an Exhibit E, an Exhibit H, and
7 Exhibit K.

8 MR. HARWICK: Yeah, Exhibit K, I believe, has a
9 laundry list of about 61 items.

10 THE COURT: Which ones do you want me to focus on?

11 MR. HARWICK: Well, you know, I think obviously
12 Mr. Stojanovich has access to his tax returns --

13 THE COURT: Just give me the number under Exhibit A.

14 MR. HARWICK: Sure, number 3.

15 THE COURT: Okay.

16 MR. HARWICK: Just going through these, number 4, bank
17 account statements, Mr. Stojanovich admitted at his most recent
18 deposition that he did indeed have a brokerage account at
19 Morgan Stanley, he had an account at Santander Bank, he had an
20 account at Capital One. He failed to produce documents showing
21 what was in those accounts. In this day and age, where you
22 have electronic access to records going back, you know, he
23 certainly had access to those records. He failed to produce
24 those.

25 THE COURT: Remind me what his testimony was with

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1 respect to the tax returns.

2 MR. HARWICK: I don't recall. He was very evasive as
3 to the identity of his accountant. I don't know if he claimed
4 not to have filed returns, but --

5 THE COURT: Let me get his deposition testimony. Hold
6 on for a moment.

7 Okay I have got 3 and 4 on Exhibit A. What else
8 should I be looking at? Exhibit A to Exhibit K of your
9 original motion.

10 MR. HARWICK: All the documentation that is described
11 by page 50, at number 57, this is a case of cryptocurrency
12 fraud and a cryptocurrency scam. We believe he has
13 cryptocurrency and want records about his cryptocurrency
14 accounts.

15 Number 56, "All mobile devices, including his phone or
16 tablet," we want those for a forensic examination.

17 "Software and hardware," while this cryptocurrency can
18 be held on a hard drive, we believe Mr. Stojanovich is holding
19 cryptocurrency on a hard drive somewhere.

20 THE COURT: I think there was testimony to the -- at
21 the deposition to the fact that he did in fact have a mobile
22 device, a telephone, and that he also had a wallet, although my
23 recollection is that the testimony was unclear as to whether it
24 was in his storage facility or was in his rental car. Is that
25 correct?

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1 MR. HARWICK: That is correct, your Honor. And when I
2 asked him to go produce those things, he did leave. We were
3 supposed to adjourn for half an hour so he could run down to
4 the parking garage, and then he never came back with any of
5 those items and, in effect, never came back. I tried calling
6 Mr. Stojanovich on the phone number that he had given to me --

7 THE COURT: No. I have that. I'm really focused on
8 the materials that -- that he failed to produce in your
9 application for contempt for violation of the subpoenas as they
10 were incorporated in my February order requiring him to produce
11 materials by March 1.

12 MR. HARWICK: Thank you, your Honor. Yes.

13 You know, we also requested brokerage margin account
14 statements, brokerage account statements, basically all
15 financial records that Mr. Stojanovich has access to or has,
16 and he has really failed to produce anything.

17 We did come to learn that there was money in the
18 Morgan Stanley account. That money is now frozen.

19 I also have evidence that Mr. Stojanovich had an
20 account at the Royal Bank of Canada which he failed to disclose
21 at his deposition and he failed to produce any documentation
22 of. So this judgment --

23 THE COURT: Do you have the evidence about the Royal
24 Bank of Canada account with you that you would like to submit
25 as part of this hearing? Because otherwise I just have your

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1 proffer.

2 MR. HARWICK: Yeah, unfortunately my tablet and my
3 phone were seized. I didn't print it out. I could submit it
4 to the --

5 THE COURT: No. Today is the hearing.

6 MR. HARWICK: Yup. No. It's fine. You have my
7 proffer as an officer of the court.

8 THE COURT: No. I'm not going to credit your proffer.
9 I'm only going to credit what I have got as evidence.

10 MR. HARWICK: Okay.

11 In any event, I think there is ample evidence on the
12 record before the Court, especially the contempt being
13 essentially unopposed in writing, to hold this judgment debtor
14 in contempt and just to force him to use his best efforts to
15 produce all the financial records and documentation that we
16 have been seeking now to aid the enforcement of this sizeable
17 money judgment.

18 THE COURT: Okay. Let me ask you one more question.

19 In terms of relief, you have asked that I have
20 Mr. Stojanovich arrested. Why isn't the more prudent course at
21 this time to impose a daily fine on Mr. Stojanovich for each
22 day that he fails to produce the materials and then to set a
23 subsequent date for a consideration of whether he should be
24 arrested and imprisoned because the financial fine is not ---if
25 the financial fine turns out not to be sufficient.

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1 And second, do you have a view with respect to what,
2 if anything, is the appropriate award for Mr. Stojanovich's
3 failure to appear today should I determine that there is no
4 justification for his failure to appear today?

5 MR. HARWICK: To answer your first question, I think
6 that additional civil fines and penalties will be wholly
7 ineffective to get this judgment debtor's attention. We
8 already have a judgment for well over a million dollars. There
9 are other judgment creditors out there that I represent that
10 have judgments for over a million dollars. The money judgment
11 doesn't seem to be effective in getting this judgment debtor to
12 let us know where his assets are so we can execute upon that
13 judgment. I think additional fines would be futile. I think
14 you could fine him a million dollars a day and he wouldn't care
15 and he would still ignore the subpoena and he would still
16 ignore this Court's clear order.

17 I think at this point an arrest warrant would get the
18 judgment debtor's attention. All we are looking for is
19 compliance with the Court's order and the subpoena, and he
20 holds the key to his own fate by either complying with the
21 Court's order, complying with the subpoena, or not. But I
22 think the penalty of additional fines would not be effective.

23 To address the second point, I do think, at a minimum,
24 he should pay my attorney's fees and a fine for not appearing
25 today. I thought this was -- well, it was an in-person

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1 contempt proceeding. It's a serious matter. It's quasi
2 criminal. The Court clearly ordered Mr. Stojanovich to appear
3 here in person.

4 I came down last night from Albany and stayed over so
5 I could be here on time, and my clients have incurred a
6 substantial expense in my time not only preparing this motion,
7 but also appearing before your Honor today. So I would request
8 that my attorney's fees be paid and that the Court issue at
9 least a \$10,000 fine to Mr. Stojanovich.

10 We request that the Court further order that he appear
11 in person at the next hearing, if the Court to would consider
12 scheduling a hearing, and bring with him all the subpoenaed
13 records, including all his electronic device, all of his bank
14 account record, his tax returns, his crypto asset records, and
15 permit me to conduct a further examination in this courthouse
16 with a stenographer present or at a different facility located
17 in midtown Manhattan called Diamond Court Reporting, which is
18 where we conducted the last deposition.

19 THE COURT: Okay. I will hear from Mr. Stojanovich.

20 MR. STOJANOVICH: I would like to respond to each one
21 of the accusations that have been (unintelligible).

22 (Court reporter confers)

23 THE COURT: Sir? Sir, if you wish to be heard, you
24 have got to speak more loudly and more clearly.

25 MR. STOJANOVICH: I was about to address that. Part

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1 of the difficulty that I am having is I have a neuromuscular
2 disorder, which I know that this --

3 THE COURT: Sir, you have to speak more clearly.

4 MR. STOJANOVICH: I have Charcot-Marie-Tooth disorder.
5 It's a genetic disorder I was born with. I have had two
6 corrective surgeries. It affects my mobility and it also
7 affects my tongue, so I apologize for my speech difficulties.
8 It gets bad during the change of seasons.

9 I sent an e-mail in this morning requesting if it was
10 possible to do a continuance, as I also was in the process of
11 having a lawyer accompanying me to --

12 THE COURT: That application is denied. You were on
13 notice of this hearing for a long time. The Court prepared for
14 it. Plaintiffs' counsel prepared for it. You were ordered in
15 no uncertain terms to be here today. If you had a basis for
16 not being here, you could have made the application last week.
17 You did not. So that application is denied.

18 MR. STOJANOVICH: I understand. I have -- I hope I
19 can explain this better, but I have a compounding disorder that
20 I am struggling with that -- sometimes it is worse on certain
21 days. And the reason why -- I understand it is denied, but for
22 further clarity on the subject is that the ability to travel, I
23 am traveling hours to the court. I started having difficulties
24 yesterday and I have been having difficulty on and off all week
25 (unintelligible).

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(Court reporter confers)

THE COURT: Sir, you have to speak more clearly.

MR. STOJANOVICH: I'm sorry, your Honor. I was hoping to make it through physically. There is very little treatment for the disorder that I have, and I understand that that doesn't excuse my inability to arrive today. I know it doesn't forgive a court hearing that I have prior knowledge of and that I have -- and I apologize that I was unable to make it there. I also have been -- there was an issue with my engaged counsel that I had who had their own issue with -- in regards to communicating some of my difficulties that I am having, and it got a lot worse yesterday when they were unable to follow through from the referral. I have sent an e-mail over in regards to that this morning. It bounced back. And I re-sent it again, explaining in great detail how it affected me. So I, first and foremost, want to apologize, your Honor, that I am not there myself in person right now, as I should be. I just didn't have the mechanism by which to get there, and I was hoping that my counselor would be able to help me with that, my counselor there, and I do and I will have an engaged counselor going forward. I don't know if they have already contacted (unintelligible) my email contacted them as my representation. But through my efforts to remedy that, I have been following some of the advice you gave to me to reach out to some organizations, as well, over the last couple of weeks, and I

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1 then finally got somebody. Then they fell through this
2 weekend, as well, which compounded to this kind of avalanche.

3 But what's more important is my effort to provide
4 documents which he had requested.

5 I first want to correct one thing. I arrived one hour
6 early to the deposition in person. I was there on time. And
7 when I had explained to him that I didn't bring my phone and my
8 wallet up, I told him I had to go walk to the rental car. The
9 rental car didn't have a traditional printed-out agreement. It
10 is done digitally. It is like a Zipcar, where they have
11 membership in it, and it's like a prepaid card with a credit
12 card to go ahead and do that, to rent the vehicle. So the
13 terms and conditions are digitally provided, not printed. You
14 go to the vehicle, you put the key in, and then it activates
15 through your cell phone dial-in, and then you pay for it in
16 that manner.

17 Secondly, I explained that at the deposition, that it
18 was by Zipcar in that regard; that it is a membership-based
19 rental company, not like Hertz or Enterprise where they have a
20 printed contract. And I asked for a bit of clarity of how to
21 be helpful. I didn't have a printer obviously at my disposal
22 at the deposition.

23 Now, I did return back. I called up numerous times.
24 I came back with my cell phone. I have (unintelligible) here,
25 and I was willing to provide that information.

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1 Furthermore, when he brought up the Morgan Stanley
2 account, that account wasn't opened with funds until after the
3 deposition had passed, the first deposition. So there was
4 nothing to report in terms of that.

5 And during the last hearing he had referred to
6 millions of dollars in trading in that account. There hasn't
7 been a single trade in that account. The second that account
8 was -- funds were brought into that account, the funds were
9 frozen. So there was no trading, as he attested to himself,
10 that the funds were frozen. And I provided those statements
11 showing from that date on that the funds had stayed exactly
12 where they are supposed to be, that they haven't moved, they
13 haven't been spent or utilized on anything whatsoever.

14 And in our I guess you would call it private
15 discussions, we have been trying to find a mechanism by which
16 the settlement agreement can be executed, but we have been
17 having difficulty getting a copy, which we know from the
18 clients as well as the attorney, John, that has been signed but
19 they don't want to show the settlement agreement, and in the
20 settlement agreement there is a stipulation in there, they are
21 providing me with documentation, such as --

22 (Court reporter confers)

23 THE COURT: You have to speak more slowly. I'm going
24 to order you to stop.

25 MR. STOJANOVICH: Where would you like me to start

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1 again? Is it better to take a step back as far as
2 describing --

3 THE COURT: You can start -- you can start with the
4 reasons why -- let me ask you a few questions.

5 Do you have a telephone?

6 MR. STOJANOVICH: Yes, your Honor.

7 THE COURT: You have a telephone.

8 MR. STOJANOVICH: Yes, your Honor.

9 THE COURT: Why didn't you turn that over?

10 MR. STOJANOVICH: I returned back --

11 THE COURT: No. Why did you not turn that over on
12 March 1.

13 MR. STOJANOVICH: During the depositions?

14 THE COURT: No, sir. On March 1, a few days before
15 the deposition.

16 MR. STOJANOVICH: Oh, the telephone of my subpoena?
17 That was the means by which they could contact that. And I
18 didn't know that I -- I misunderstood that he wanted the actual
19 phone that was active that I had at that time to communicate
20 with. And that's my means of communication to communicate with
21 him. So I didn't think he was actually requesting my --

22 THE COURT: All right. Let me ask you a couple of
23 other questions. Is there anything more with respect to the
24 telephone?

25 MR. STOJANOVICH: The telephone, I have no problem

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1 handing the telephone --

2 THE COURT: No, no. It is too late. Maybe you will
3 be able to purge yourself of contempt.

4 But in terms of your past conduct, when you left the
5 deposition, where did you go? I went back, as instructed, to
6 (unintelligible) and the locker. I grabbed both my wallet and
7 my telephone.

8 THE COURT: Is there a reason why you did not come
9 back at 1:00?

10 MR. STOJANOVICH: I actually -- I explained to him
11 (unintelligible) at the deposition and afterward, he had said
12 return back at 12:00. It was already 12:43. And the other
13 members that were present, I can't return back at 12:00, that
14 is midnight, to the deposition, and I go, well, it's a ways
15 where I have to go to. It is going to take some time to get
16 there. I'm going to go as quickly as I can to go to both
17 locations.

18 THE COURT: Okay.

19 MR. STOJANOVICH: When I got back, it was just shy of
20 I think 1 -- it was like 1:12 is when I got into the lobby, and
21 I wasn't regained admittance to the building.

22 Now, I finally got into the building. I didn't have
23 my phone with me to contact him directly afterward. I had to
24 retrieve the phone for him to call me. Now, I had a low
25 battery on my phone in the locker, and the car had to be

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1 retrieved from the parking area in Times Square. Times Square
2 is not that easy a place to navigate, so I had to walk eight
3 blocks, eight and a half city blocks, roughly about a mile, a
4 mile and a half, to go get to my car and back, but I explained
5 to them that's going to take some time. You know, even if I
6 was running a full sprint at 12:42, there was no way for me to
7 do that to get my wallet and --

8 THE COURT: Mr. Stojanovich, I'm going to cut you off.
9 I'm going to hold you in contempt.

10 MR. STOJANOVICH: Well, just --

11 THE COURT: Mr. Stojanovich, if you keep on talking
12 the contempt is going to get worse.

13 You had an opportunity to submit evidence in response
14 to the motion for contempt. You forfeited that opportunity.
15 The Court, as a matter of grace, permitted you to speak today,
16 but not as a matter of right. Your matter of right was last
17 week when you had a deadline that you failed to satisfy. You
18 also were ordered to be here today. You have provided
19 inadequate excuse for not being here today, and so I am going
20 to hold you in contempt.

21 I am going to order you to -- and I will go through
22 the reasons in a moment, but I am going to order you to pay a
23 financial sanction to the Clerk of Court of \$1,000 a day until
24 you purge yourself of your contempt by turning over the
25 materials requested in the subpoenas and at the depositions as

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1 reflected in my order of February 14.

2 I am also going to hold you in contempt for your
3 failure to show up today. That contempt will be \$5,000 payable
4 to the Clerk of Court by one week from today, April 18.

5 I am also going to permit counsel for the plaintiff to
6 submit his attorney's fees. I am going to award attorney's
7 fees, under Rule 45 and my inherent power, to counsel for the
8 plaintiff. Counsel for the plaintiff shall submit, by
9 Wednesday, their proposed attorney's fees. And,
10 Mr. Stojanovich, you will have an opportunity by one week from
11 Wednesday, that will be April 20, to put in any opposition to
12 the fee award.

13 I am going to schedule a further hearing on this
14 matter for approximately two weeks from today. My courtroom
15 deputy will give me the date to determine whether
16 Mr. Stojanovich has purged himself of the contempt and whether
17 the financial sanctions are sufficient.

18 If Mr. Stojanovich has failed to purge himself of the
19 contempt and has acted -- continued to act in a willful manner,
20 then I will, if the appropriate showing is made, order the U.S.
21 Marshals to arrest Mr. Stojanovich and to imprison him until
22 his contempt has been purged.

23 Mr. Fishman, can you give me a date for approximately
24 two weeks from today?

25 (Pause)

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1 THE COURT: That will be April 28 at 10 a.m. in this
2 courtroom, Courtroom 15C at 500 Pearl Street.

3 Mr. Stojanovich is ordered to attend on pain that if
4 he is not here, then he will be arrested and imprisoned.

5 Mr. Harwick, I am going to ask you to prepare for me
6 and to send to chambers a proposed form of contempt order
7 encapsulating what I have ordered today.

8 Let me give you a little bit more of my reasoning.
9 Mr. Harwick you will submit that to me by the end of the day
10 today on notice to the defendant, Mr. Stojanovich.

11 MR. HARWICK: Your Honor, I will be on the train going
12 back to Albany. I won't being back in my office until
13 tomorrow.

14 THE COURT: You will submit it to me by -- what time
15 tomorrow can you get that to me?

16 MR. HARWICK: By the close of business is fine.

17 THE COURT: By 5:00 is fine on notice to
18 Mr. Stojanovich.

19 The \$1,000 a day to the Clerk of Court will run only
20 after I have entered the formal order, but the \$5,000 to the
21 Clerk of Court for the failure to appear will run -- that will
22 be due as I have stated. Let me give you a little bit more of
23 my reasoning. The plaintiffs here--Alex Holmes, Justin Navarro,
24 Nico Tramontana, Bitcoin Ventures 2020, LLC, Yasar Corporation,
25 and OnePurpose Ltd.--move to hold defendant Chet Stojanovich in

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1 criminal and civil contempt.

2 Plaintiffs first moved to hold Mr. Stojanovich in
3 contempt in January 2022 for failing to comply with their
4 New York CPLR Article 52 subpoenas served to aid enforcement of
5 a money judgment. The motion grew out of the plaintiffs'
6 efforts to collect on a default judgment they obtained against
7 Mr. Stojanovich in this case. In essence, Mr. Stojanovich
8 failed to produce documents regarding financial accounts and
9 institutions that he was using as well as materials that would
10 help plaintiffs discover cryptocurrency believed to be in his
11 possession, including hard drives and his telephone and log-on
12 information for his iCloud accounts and a series of other
13 information, as reflected in the subpoenas, one copy of which
14 is at Exhibit K to the January motion.

15 The Court held a telephonic hearing on that
16 application on February 14, 2022. Mr. Stojanovich appeared.
17 At the conference, the Court ordered Mr. Stojanovich to
18 personally appear for deposition at the offices of Diamond
19 Court Reporting in New York City on March 4, 2022, at 11:30
20 a.m. for the continuation of his deposition. I also ordered
21 Mr. Stojanovich to produce all of the documents that were
22 requested in the subpoenas dated January 29, 2021, March 29,
23 2021, and May 18, 2021, as further supplemented by the request
24 made at his deposition of June 23, 2021, by no later than March
25 1, 2022. Mr. Stojanovich indicated his understanding of the

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1 Court order. All of that is at page 22 to 23 of the transcript
2 of the hearing on February 14, 2022.

3 I held in abeyance then the motion for contempt to see
4 if Mr. Stojanovich would produce all of the relevant and
5 required documents. I further advise Mr. Stojanovich that
6 there was a legal clinic that provided advice to people
7 proceeding *pro se* who could not afford counsel. I also set a
8 deadline for Mr. Stojanovich to submit papers in response to
9 the renewed motion by the plaintiffs for contempt.

10 Mr. Stojanovich appeared for his deposition on March 4
11 of 2022 as ordered. I have been provided a copy of the
12 transcript of that deposition. He did not produce the
13 subpoenaed materials as ordered by the Court.

14 In addition, after the deposition was temporarily
15 adjourned at 12:30 p.m. for him to retrieve his phone, wallet,
16 and rental car agreement from his car, with the understanding
17 and requirement that he return and the deposition would
18 recommence at 1 p.m., he voluntarily absented himself from the
19 deposition. He never returned defense counsel -- I'm sorry.
20 Plaintiffs' counsel's calls to him went unanswered.

21 I have also reviewed the testimony from that
22 proceeding, and Mr. Stojanovich's testimony was consistently
23 evasive and unresponsive. In essence, he did what he could to
24 obstruct the proceedings.

25 Under Rule 45(g), the Court can hold in contempt a

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1 person who, having been served, fails to have adequate excuse
2 to obey a subpoena or an order relating to it. That is the
3 *PaineWebber* case, 211 FRD 247, 249 (S.D.N.Y. 2002). In
4 addition, the Court has inherent power to punish for contempt
5 under *Chambers v. Nasco*, 501 U.S. 32 (1991). The Court also
6 "has the inherent power to hold a party in civil contempt in
7 order to enforce compliance with an order of the Court or to
8 compensate for losses or damages." *Powell v. Ward*, 643 F.2d
9 924, 931, Second Circuit.

10 There are three essential elements that must be
11 established before a party can be held in civil contempt:
12 There must be an order that is clear and unambiguous, that's
13 *Powell v. Ward*, 643 F.2d at 931; second, the proof of
14 noncompliance with that order must be clear and convincing,
15 same case; and, third, it must be shown that the contemnor has
16 not been reasonably diligent and energetic in responding -- in
17 attempting to accomplish what was ordered, again, the same
18 case.

19 In addition, I find that the subpoenas were clear and
20 unambiguous in terms of what they required Mr. Stojanovich to
21 do. I also find that my orders of February 14, 2022, were
22 clear and unambiguous in terms of what they required
23 Mr. Stojanovich to do.

24 The order of February 14 directly ordered him to
25 produce all of the documents that were requested in the

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1 subpoenas dated January 29, 2021, March 29, 2021, and May 18,
2 2021, as further supplemented by the request made at his
3 deposition of June 23, 2021. I ordered those materials to be
4 produced no later than March 1, 2022. If there was any
5 ambiguity—and there was none—but if there had been any
6 ambiguity, the ambiguity would have been cleared up by the fact
7 that Mr. Stojanovich expressly indicated his understanding of
8 the Court's order.

9 I further find that the proof of noncompliance with
10 the order is clear and convincing. I have in front of me the
11 sworn testimony of counsel for the plaintiffs that the
12 requested materials were not produced. I also have the
13 deposition transcript indicating that the materials were not
14 produced. I also have in front of me evidence that at least
15 some of the materials that were requested were in
16 defendant's -- I'm sorry were in plaintiffs' possession,
17 custody, and control and could have been produced.

18 MR. HARWICK: Your Honor, I believe you meant to say
19 defendant's custody and control.

20 THE COURT: I'm sorry, I further have in front of me
21 evidence from plaintiff that some of the requested information
22 was in defendant's possession, custody, and control. That
23 includes income tax returns, bank account statements, mobile
24 devices, software and hardware wallets, and cryptocurrency
25 information contained on servers, computers, and laptops. That

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1 list is not by any means exclusive. That information and that
2 evidence comes in part from the deposition transcripts. It is
3 not disputed on the record here in front of me. Again, the
4 defendant had an opportunity to submit evidence that he
5 complied with the subpoenas. He did not do so. He also had
6 ample opportunity to comply with the subpoenas. He did not do
7 so.

8 Finally, I find that the contemnor, Mr. Stojanovich,
9 has not been reasonably diligent and energetic in attempting to
10 accomplish what was ordered. There is no evidence whatsoever
11 that Mr. Stojanovich made any efforts to comply with the
12 subpoenas. This is against a backdrop of plaintiffs repeatedly
13 asking for the same information and the defendant,
14 Mr. Stojanovich, repeatedly stonewalling the plaintiffs.

15 Finally, with respect to the appearance today, as I
16 already indicated on the record, my order to Mr. Stojanovich to
17 appear today in person was clear and unambiguous. It also is
18 clear that Mr. Stojanovich is not here. He did not comply with
19 the order to be here in person. He has attempted to excuse his
20 absence by various medical reasons and asserting issues with
21 respect to a purported counsel. I will note that no counsel
22 for Mr. Stojanovich has made an appearance on the record and
23 has filed a notice of appearance. I will also note the
24 evidence from the last hearing with Mr. Stojanovich where he
25 attempted to delay the hearing by making reference to a counsel

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1 who he said would appear. That counsel had not filed a notice
2 of appearance and was not counsel for Mr. Stojanovich in this
3 case. Mr. Stojanovich claims that he couldn't appear because
4 of allergies that have gotten worse, or words to that effect.
5 I will note that he was able to appear at the deposition. His
6 verbal affect today was different from that at the hearing in
7 February, and I can take note of that.

8 I also will note that Mr. Stojanovich had the
9 opportunity to inform the Court at any time prior to early this
10 morning if he sought an adjournment. He did not do so. The
11 only conclusion that I can draw from Mr. Stojanovich's e-mails
12 this morning and from his presentation this morning,
13 particularly against the backdrop of this case, is that it is
14 consistent with a pattern displayed by Mr. Stojanovich of using
15 last-minute excuses repeatedly to avoid his obligations to the
16 Court imposed by Court order.

17 So on the basis of all of those findings, I am
18 ordering that Mr. Stojanovich be held in civil contempt.

19 With respect to the application for criminal contempt,
20 that application is further held in abeyance until we see what
21 Mr. Stojanovich does with respect to the civil contempt that I
22 have ordered.

23 Is there anything further from plaintiffs' counsel?

24 MR. HARWICK: Yes, your Honor. I have three things.
25 We are still requesting and reserving our right to complete

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1 Mr. Stojanovich's deposition once he has supplied the
2 court-ordered financial information.

3 THE COURT: I should -- let me, before you go further,
4 I should also add that as part of my findings of contempt and
5 Mr. Stojanovich's violation of my order, I am including
6 Mr. Stojanovich inexcusably and voluntarily absenting himself
7 from the court-ordered March 4 deposition before that
8 deposition was completed. My order was not intended to be
9 satisfied by Mr. Stojanovich simply attending, answering a
10 number of questions, and then absenting himself while the
11 deposition was midstream. It was clear and unambiguous that
12 Mr. Stojanovich was required to sit for his deposition. That
13 means attending the deposition and answering questions until
14 the deposition was complete. Mr. Stojanovich willfully failed
15 to comply with that court order.

16 Go ahead, Mr. Harwick.

17 MR. HARWICK: So, yes, thank you. For the record, we
18 are reserving our right to conduct this further deposition and
19 move forward with the contempt if he doesn't appear following
20 the production of documents per your Honor's order.

21 The next issue is the date of April 28. Although I
22 don't have my phone and calendar here, I know I have an
23 arbitration in Albany that date that was going to take place
24 all the day. I believe there may be another day around that
25 date when I am available but, again, I don't have my phone or

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1 my laptop with me to check my calendar.

2 THE COURT: Look, sir, I'm going to schedule that date
3 right now and I will schedule it for a date after April 28, but
4 you have to give me a date certain.

5 MR. HARWICK: April 28 I believe is a Friday.

6 THE COURT: It's a Thursday.

7 MR. HARWICK: Maybe that Friday.

8 THE COURT: Let me see if I can do that.

9 MR. HARWICK: If possible I request it occur
10 afternoon, if at all possible, if I am requested to be here in
11 person. Otherwise . . .

12 THE COURT: 4:00 on April 29.

13 MR. HARWICK: That would work.

14 THE COURT: Mr. Stojanovich, can you hear me?

15 MR. STOJANOVICH: I can hear you just fine, your
16 Honor.

17 THE COURT: You are ordered to be here April 29 at 4
18 p.m. That's courtroom 15C at 500 Pearl Street.

19 Do you understand?

20 MR. STOJANOVICH: Just a moment. Let me --

21 MR. HARWICK: Hold on, your Honor. Now my memory is
22 coming back. I'm taking my son to Cornell for a school visit
23 on the 29th. I apologize. If I had my calendar -- can we do
24 it on the 27th? I will clear my calendar.

25 THE COURT: No. We are going to do it after April 28.

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1 MR. HARWICK: Okay. The following week I don't
2 believe I have anything.

3 THE COURT: If you do --

4 MR. HARWICK: I'll move it.

5 THE COURT: Give me a date, but if you do, you are
6 going to move it.

7 MR. HARWICK: Yeah.

8 THE COURT: Give me two dates that you might be
9 available, Mr. Harwick.

10 MR. HARWICK: Let me see. Probably the Tuesday I can
11 clear my calendar that week, I believe.

12 THE COURT: That's May 3.

13 MR. HARWICK: May 3.

14 THE COURT: May 3 at 3 p.m.

15 MR. HARWICK: Thank you, Judge.

16 THE COURT: Mr. Stojanovich, can you hear me?

17 MR. STOJANOVICH: I can hear you clearly, your Honor.

18 THE COURT: You are ordered to be in the U.S.
19 Courthouse, May 3 at 3 p.m. That's Courtroom 15C at 500 Pearl
20 Street.

21 MR. STOJANOVICH: May 3 at what time?

22 THE COURT: 3 p.m.

23 MR. STOJANOVICH: 3 p.m. And what is the address
24 of --

25 THE COURT: 500 Pearl Street.

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1 MR. STOJANOVICH: 500 Pearl Street.

2 THE COURT: Courtroom 15C.

3 MR. STOJANOVICH: Courtroom 15C.

4 am I allowed to -- my counselor should be notifying
5 the Court soon enough of my engagement. I apologize that it
6 wasn't taken care of properly and that it exceeded an hour. I
7 can understand the loss behind that. I also have one question
8 if I may, your Honor.

9 THE COURT: Let me hear from the last point from
10 Mr. Harwick, and then I will hear from you.

11 MR. HARWICK: Thank you, Judge.

12 Point number three, I would like to confirm with
13 Mr. Stojanovich that he can be served via e-mail with a copy of
14 the Court's order, and I would also like to get a physical
15 address for him placed on the record so we have complete
16 contact with this *pro se* litigant until such time as counsel
17 appears on his behalf.

18 THE COURT: Do you have an e-mail address for him?

19 MR. HARWICK: I do, and he gave one to the Court at
20 the last conference that I believe it is a phoenixdata.com
21 address. But if that is still a good address, I would ask that
22 that be confirmed.

23 THE COURT: Mr. Stojanovich, will you accept service
24 by e-mail of the court order?

25 MR. STOJANOVICH: Absolutely, but I would like to

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1 clarify the e-mail address, because I am not getting any
2 communications from him. It is admin, A-D-M-I-N, at Phoenix,
3 like the place or the bird, P-H-O-E-N-I-X, and then the word is
4 plural D-A-T-A-S.com.

5 THE COURT: And Mr. Stojanovich that is the e-mail
6 address from which you sent the e-mail this morning that we
7 will then send to plaintiffs' counsel, is that correct?

8 MR. STOJANOVICH: Absolutely.

9 THE COURT: And do you have a physical address, sir?

10 MR. STOJANOVICH: The physical address, I am still
11 between places, your Honor, and so I don't want to give an
12 address where I can't physically be at at any time of any duty
13 chain. I just don't want to present myself in that way. I do
14 have a mailing address, if that helps, in upstate, and it's not
15 too far from where he is at. It is in Champlain, and it is
16 11320 Route -- Route 9, and I will have to pull the rest of the
17 mailbox up, number 51442, Champlain, New York, and that's
18 12919. For mailing purposes, it's best to do digitally as this
19 residence is where I can receive mail and I receive mail on a
20 periodic basis. So it's a P.O. box if you will. So it's best,
21 it's most efficient to use the admin@phoenixdatas.com
22 P-H-O-E-N-I-X-D-A-T-A-S.com.

23 And also I just want to make sure, John, that I can
24 confirm your e-mail, because I have had some issues in the
25 past, lost e-mail, stuff like that. I just want to make sure

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1 you are getting all of my e-mails with responses for the
2 information you have requested that I have responded back to.

3 THE COURT: Mr. Harwick, what's your e-mail address?
4 Put it on the record.

5 MR. HARWICK: Yes, your Honor. My e-mail is jharwick,
6 J-H-A-R-W-I-C-K, @joneshacker, J-O-N-E-S-H-A-C-K-E-R, .com.

7 THE COURT: Okay. Very well.

8 All right. Mr. Stojanovich, I gave you leave to ask
9 me a question.

10 MR. STOJANOVICH: Yes. If I am incapable of reaching
11 John electronically or by phone and there is a request for
12 documentation or support documentation on the four areas that
13 you spoke on, can I submit that directly to the Court if I
14 don't get a response? Given the history of having lost
15 e-mails, the e-mail requests prior to the date of the
16 deposition for the documentation asking him what he was missing
17 from that point on, those issues I don't want to have repeat
18 themselves, so we have a clear and transparent line of
19 communication, and I want to make sure that he gets exactly
20 what he is requesting and the physical address to send the
21 phone to, so everything that I had and utilized that phone. I
22 will have to buy another phone so I can communicate.

23 THE COURT: Mr. Harwick, do you have a position on
24 that?

25 MR. HARWICK: Yeah. I would request that documents be

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1 sent directly to my 28 Second Street, Troy, New York 12180
2 office and electronically to my e-mail.

3 I would also ask the Court to admonish and caution
4 Mr. Stojanovich not to clean his phone or wipe his phone or
5 remove any data from his phone because we intend on having it
6 forensically examined.

7 THE COURT: I will consider the issue,
8 Mr. Stojanovich, as to whether you can purge yourself of
9 contempt by producing the documents to me or whether you are
10 required to produce them to the plaintiff. You are required by
11 my court orders so far to produce them to the plaintiff. In
12 terms of whether you can purge yourself of the contempt by also
13 producing them to me, I am going to consider that issue.

14 I am going to order you to do two things. First of
15 all, if the -- if you have not purged yourself of contempt by
16 producing the materials prior to May 3, you are going to be
17 ordered to produce them, to bring them to the courtroom on May
18 3, all of the information that has been subpoenaed in the
19 subpoenas of January 29, 2021, March 29, 2021, May 18, 2021,
20 and then supplemented by the request made at the depositions of
21 June 23, 2021.

22 I am also going to advise you that if you do make
23 efforts to tamper with your phone, to wipe it, to remove data
24 from it, to alter the data that is on it, that your conduct in
25 doing so could constitute a further contempt of the court. So

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1 you should --

2 MR. STOJANOVICH: I'm not going to change anything
3 with the phone. The call logs will be there. It's an analog
4 phone that I use for security reasons. It's a very
5 straight-forward flip phone. I got it here. It's to date. I
6 will remove the SIM card, of course, because I will need that
7 to make phone calls on a new phone that I have. I am just
8 letting you know what kind of phone it is so there is no
9 expectation of anything else there. It is -- the model of the
10 phone for the Court's record is a TCL phone, and I believe it
11 is operated by Verizon. And I have to check the brand on it
12 real quick so there is no -- it's got a camera it's got basic
13 apps and --

14 (Court reporter confers)

15 THE COURT: Sir, we can't understand you.

16 MR. STOJANOVICH: Oh. I'm sorry. I'm sorry. My
17 speech -- sometimes it's annoying. I understand it. It's
18 frustrating for me to try to fix it, but I'm working on it.

19 Sorry. Give me a moment. The phone which I am trying
20 to give the exact model, make and model, which I hope will be
21 helpful when they do a forensic look at the phone, that way
22 they know what the phone is. Is it is called a TCL. To be
23 specific it is -- I am opening up the actual serial --

24 THE COURT: Sir, I don't think we need this detail.

25 MR. STOJANOVICH: I just don't want it to appear that

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1 I am withholding something with a smart device. It is --

2 THE COURT: Listen, you know, you are going to be
3 ordered to -- you are ordered to produce everything has been
4 subpoenaed. I can't now determine whether the phone that you
5 are referring to is the only phone that you have got or not. I
6 am not having a hearing with respect to that. The point of it
7 is that you do have a phone that has not been turned over. I
8 don't know whether that is the only phone. It is certainly not
9 the only thing that has been subpoenaed. There will come a
10 time hopefully when you have produced at least some of what has
11 been subpoenaed and when you do produce some of what has been
12 subpoenaed, then it will be up to the plaintiff to tell me
13 whether he believes that that is everything. If the plaintiff
14 convinces me by clear and convincing evidence that it is not
15 everything, then the contempt will not be purged.

16 On the other hand, if you produce materials and it
17 turns out that you have produced everything that you have got,
18 then you will purge yourself of the contempt and the fines will
19 no longer continue to run.

20 Okay. Anything else, Mr. Stojanovich?

21 MR. STOJANOVICH: My last inquiry is may I, for the
22 court record, submit all prior communications and documentation
23 provided to him to the Court as well so there is no ambiguity
24 between "he said, she said," that we have proven, with the time
25 stamps of each one of the e-mails, along with the e-mail

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1 blockage in the past?

2 THE COURT: Mr. Stojanovich, in order to purge
3 yourself of the contempt, you can submit to me evidence that
4 you have satisfied the Court's order. I will then give the
5 plaintiff an opportunity to respond. All of that will be
6 reflected in the Court's order.

7 And with respect to the May 3 hearing, if you haven't
8 purged yourself of contempt by then, you can bring -- and you
9 can and are ordered to bring the evidence that would establish
10 that you have complied with the Court's orders.

11 MR. STOJANOVICH: And may I e-mail that to an e-mail
12 address of my efforts to you?

13 THE COURT: You can comply with the Court's filing
14 requirements as reflected on the Court's website. You are
15 required to comply with the Court's filing requirements. That
16 means filing materials on the public docket. E-mails sent to
17 chambers are not viewed by the Court. You are not permitted
18 except under emergency circumstances, to send e-mails to the
19 Court's chambers.

20 MR. STOJANOVICH: All right. I understand. That's
21 what I wanted to ask. I didn't want you getting a litany of
22 e-mails, distract from what work you are doing, and I
23 respect --

24 THE COURT: Mr. Stojanovich, and I will also address
25 myself to Mr. Harwick on this, the Court has very clear

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1 individual practices with respect to the filing of materials,
2 and those practices address the limited circumstances under
3 which materials can be e-mailed. Those practices are available
4 on my website.

5 Okay. Mr. Harwick you will submit me a proposed form
6 of order.

7 We are adjourned.

8 MR. HARWICK: Thank you, Judge.

9 MR. STOJANOVICH: Thank you, your Honor.

10 oOo